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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/990,611

11/21/2001

Lorraine Faxon Meisner

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21971

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10/05/2010

WILSON, SONSINI, GOODRICH & ROSATI

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EXAMINER

CHOI, FRANK I

ART UNIT

PAPER NUMBER

1616

MAIL DATE

DELIVERY MODE

10/05/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/990,611	<b>Applicant(s)</b> MEISNER, LORRAINE FAXON	
	<b>Examiner</b> FRANK I. CHOI	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 7/19/2010, 10/7/2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,10-12,15-17,21,24,25 and 36-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-8,10-12,15-17,21,24,25,36 and 37 is/are allowed.
- 6) ☒ Claim(s) 38-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/7/2009</u> .   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

Claims 1, 3-8, 10-12, 15-17, 24, 25, 36, 37 are allowed over the prior art.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 38-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP

0771557, EP 0281812 and Remington's.

The claims are directed to a topical composition comprising at least 10% (w/v) ascorbic acid, approximately 5 to 20% (w/v) glucosamine and water, where the pH is about 3.5 to about 4.1 and the composition does not comprise tyrosine or a non-toxic zinc salt.

EP 0771557 disclose a topical composition for treatment of acne which can preferably contain 1 to 20% by weight ascorbic acid, which can be in the form of an aqueous solution or emulsion having an aqueous phase, can include additional actives, such as anti-inflammatory drugs, where the composition can have a pH of approximately 4 (Page 2, lines 30-35, 54-56 page 3, lines 5-14, 40-44).

EP 0281812 disclose a topical composition for treatment of acne which contains an anti-inflammatory agent, preferably in the amount of about 5% to about 15%, which can be preferably be glucosamine, and an astringent agent such as zinc oxide, aluminum chloride, alum, aluminum acetate, calamine, zinc acetate, zinc sulfate and zinc chloride (Column 5, lines, 14-28, Column 5, lines 45-55, Column 6, lines 4-9).

Remington's discloses that purified water produced by distillation, ion-exchange treatment, reverse osmosis or other suitable treatment is used for dermatological preparations (page 1293)

EP 0771557 disclose a topical composition for treatment of acne which can preferably contain 1 to 20% by weight ascorbic acid, which can be in the form of an aqueous solution or emulsion having an aqueous phase, can include additional actives, such as anti-inflammatory drugs, where the composition can have a pH of approximately 4. The difference between EP 0771557 and the claimed invention is that EP 0771557 does not disclose the use of glucosamine or the use of distilled or deionized water. However, the prior art amply suggest the same as EP 0281812 discloses the use of glucosamine in a composition for treatment of acne as an anti-inflammatory agent; and Remington's discloses that purified water produced by distillation, ion-exchange treatment, reverse osmosis or other suitable treatment is used for dermatological preparations. As such, it would have been well within the skill of and one of ordinary skill in the art would have been motivated to modify the prior art as above with the expectation glucosamine would suitable as an anti-inflammatory drug in the composition of EP 0771557 and that distilled or deionized water would be suitable for use as the water in the composition of EP 0771557. Since none of the prior art require the use of tyrosine or a non-toxic zinc salt, one of ordinary skill in the art would be able to prepare a composition based on the teachings of the prior art above which does not contain tyrosine or a non-toxic zinc salt with the expectation that the composition would be effective in treating acne.

Therefore, the claimed invention, as a whole, would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, because every element of the invention has been collectively taught by the combined teachings of the references.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

A facsimile center has been established in Technology Center 1600. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier number for accessing the facsimile machine is 571-273-8300.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frank Choi whose telephone number is (571)272-0610. The Examiner maintains a flexible schedule, however, the Examiner may generally be reached Monday, Tuesday, Wednesday and Thursday, 6:00 am – 4:30 pm (EST).

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Johann R. Richter, can be reached at (571)272-0646. Additionally, Technology Center 1600's Receptionist and Customer Service can be reached at (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frank Choi  
Patent Examiner  
Technology Center 1600  
October 1, 2010

/Johann R. Richter/  
Supervisory Patent Examiner, Art Unit 1616